IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 867 of 2004.

Decided on: 26.4.2007.

Beli Ram

… … … Petitioner.

Versus

Union of India & Others.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting? Yes.

For the Petitioner: **Mr. R.K. Sharma, Advocate.**

For the Respondent(s): **Mr. Sandeep Sharma, Asstt. Solicitor General of India.**

Rajiv Sharma, Judge (Oral):

This petition is directed against the order dated 12th June, 2003 whereby the prayer of the petitioner for service pension has been declined.

The minimum facts necessary for adjudication of this petition are that the petitioner joined the Indian Army as Sepoy and was enrolled on 17th January, 1957. The petitioner was discharged from the Army on 24th April, 1967 and the cause of discharge was shown as "service no longer required". The petitioner had participated in Indo-China War, 1962 and thereafter Indo-Pak War, 1965. It appears from the pleadings that the

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Whether reporters of local papers may be allowed to see the judgment? Yes.

petitioner has sent application to the competent authority on 16th June, 2001 seeking service pension. In sequel to the application preferred by the petitioner, the petitioner was called upon vide Annexure P-2A dated 5th February, 2002 to send full particulars of application with Army number to the authorities. The petitioner was informed vide communication dated 12th June, 2003 that as per the existing orders to earn service pension an individual has to serve the Indian Army minimum for 15 years. Since the petitioner had only served for 10 years and 3 months, the claim of petitioner for service/ex-gratia pension was declined on 12th June, 2003. The petitioner thereafter sent a legal notice to the Chief Army Staff and Commanding Officer, Sena Seva Corps Abhilekh (Dakshin) ASC Records (South) through his counsel on 5th August, 2003.

Mr. R.K. Sharma appearing on behalf of the petitioner has urged that it is evident from Annexure P-5, dated 10th July, 2001 that the petitioner was discharged from the Army with “Fair Character only” and being a habitual offender with several red ink entries were made in his rolls. The other reason assigned for rejecting the case of the petitioner for denying the pension was that the petitioner has not put in 15 years minimum service.

Mr. Sharma on the basis of the contents of Annexure P-5 has submitted that the petitioner has not been permitted to complete 15 years of service and was discharged from the Indian Army with the observation “service no longer required”.

Mr. Sandeep Sharma submits that since the petitioner has only completed 10 years and 3 months service he is not entitled to service pension.

I have perused the record and heard the parties. It is evident from the contents of Annexure P-5 that the reason for the discharge of the petitioner from the Army was that the petitioner was a habitual offender and several red ink entries were made in his rolls. The reasons mentioned in Annexure P-5 for the discharge of petitioner cast stigma on him. The petitioner could not be discharged merely on the basis of observations which remained on the record and moreover the petitioner was not afforded any reasonable opportunity of being heard as per the principles of natural justice. The discharge of the petitioner from the Army was in violation of the principles of natural justice. The earlier exit of the petitioner has led to the petitioner not completing 15 years minimum service. Though Army is a disciplined force but still, the Army personnels are to be dealt with in a fair manner. Thus, this Court comes to the conclusion that the discharge of the petitioner from the Army was not in accordance with law and he has been prevented from completing his 15 years service. The submission of Mr. Sandeep Sharma that there is a gross delay is not tenable since the respondents themselves have called upon the petitioner to supply the necessary information as per Annexure P-2A dated 5th February, 2002. The petitioner's claim has been rejected on 12th June, 2003.

Mr. R.K. Sharma appearing on behalf of the petitioner has placed reliance on the judgment of Hon'ble Supreme Court **"Dehri Rohtas Light Rly. Co. Ltd. V. District Board, Bhojpur, (1992) 2 SCC 598"** wherein your Lordships of Hon'ble Supreme Court have held that:

> "**The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of**

discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay in filing the petition should not be allowed to be disputed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches."

Mr. R.K. Sharma has also drawn the attention of this Court to the judgment rendered by the Division Bench of this Court in "**CWP No.145 of 1995 Smt. Yontan versus Union of India, decided on 31.10.1995".** Your Lordships of this Court have held:-

"The first question that falls for consideration is whether this petition suffers from delay and laches. According to Mr. P.A. Sharma, Senior Central Government Standing Counsel, this matter has been agitated after a lapse of 15 years. The petitioner was intimated about the rejection of her claim by the Chief C.D.A. (Pensions) Allahabad vide letter dated 23rd February, 1980. It was not assailed by the petitioner before the Government of India, though advised. We are not impressed by this submission. It is plainly clear that the rejection was communicated to Sonam Ram, father of the deceased in February, 1980. After Sonam Ram, the petitioner came in picture. She approached the Army authorities through Deputy Director, Sainik Welfare Board, Kullu (Himachal Pradesh) in June, 1990. There is a notice dated 20th

October, 1994 from the petitioner's counsel to the respondent. These facts point out that the petitioner was pursuing the matter actively. We have also found that the petitioner is a poor, illiterate lady aged 63 years belonging to the remotest tribal area of the State with no source of income and none else in the family to help her and at the verge of starvation. Despite this problem, she was able to take the deceased to Lady Willingdon, Hospital, Manali with hope to treat Sukh Dev but he died after some days of treatment. In the circumstances, we are of the opinion that the matter does not suffer due to delay and laches. Moreover, the claim for pension is a continuing claim. It does not lapse with the passage of time."

In view of the law laid down by Hon'ble Supreme Court and by this Court coupled with the fact that the petitioner has been called upon to supply the information by the respondents themselves on 5th February, 2002, there is no delay in approaching this Court. It is pertinent to note that the claim for pension is a continuous cause of action.

The pension is a property and not a bounty. Hon'ble Supreme Court in "D.S. Nakara and others v. Union of India AIR 1983 Supreme Court 130" has held that: –

"Summing-up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inhere economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the heyday of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been

judicially defined as a stated allowances or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most particular raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon."

The pension is a reward for past service and the same cannot be denied merely by taking a plea of delay and laches. In the present case no rights of third party are involved. The petitioner is to be compensated for the services he has rendered in the Army.

Accordingly, the writ petition is allowed and the respondents are directed to consider the case of the petitioner by presuming that the petitioner has 15 years qualifying service to his credit since the petitioner has been prevented from completing the same on the basis of order i.e. Annexure P-1, which is not sustainable in the eyes of law. The respondents are directed to decide the case of the petitioner within a period of three months from today. The writ petition is accordingly disposed of with no order as to costs.

(Rajiv Sharma)
Judge

April 26, 2007.
(sck)